IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT APPEAL NO : 1815 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 22/12/2003 in WP NO : 12236 OF 1994 on the file of the High Court.)

Between:

1 The Union of India, rep.by its

Secretary, Ministry of Home Affairs,
Union of India Central Secretariat,
New Delhi

2 The Dy.Inspector General, N.E.(Z)
Patna, Bihar State .

3 The Deupty Inspector General /SZ Central Industrial Security Force
Rajaji Bhawan, Besent Nagar, Chennai-90.

4 TheGroup Commandant Central Industrial Securtiy Force,
Group Hqrs., Patna , Bihar State .

..... APPELLANTS

AND

1 Y.Jones, S/o Francis
Head Constable in CISF
With No.744330223 Removal from service

2 General Manager Bharat Heavy Electricals Limited
Ramachandrapouram, Hyd

.....RESPONDENTS

Counsel for the Appellants: MR.S.S.VARMA, STANDING COUNSEL FOR CENTRAL GOVERNMENT.

Counsel for the Respondent No.1: MR.T.P.ACHARYA

Counsel for the Respondent No.2: ----------

The Court made the following:

ORAL JUDGMENT: (By GB.J.)

The Writ Appeal is filed against the orders passed by the learned single Judge in Writ Petition 12236 of 2004, dated 22.12.2003.

2. 1st respondent, who was working as Head Constable in CISF, was charge sheeted for misconduct of assaulting and slapping one Mr.Darsan Singh, A.S.I. An enquiry was conducted and ultimately charges were held proved. The disciplinary authority imposed the punishment of reduction of pay in the present grade to a minimum stage i.e., from Rs.1125/- to Rs.975/-, for a period of two years with cumulative effect. Aggrieved by the said order, the 1st respondent filed an appeal. However, the appellate authority finding that the punishment was inadequate, issued show cause notice to the 1st respondent for enhancing punishment and ultimately he passed an order on 31.10.1993 removing the 1st respondent from service. Against the said order, he filed the above Writ Petition.

3. The learned single Judge holding that the punishment of removal is shockingly disproportionate, set aside the order of punishment passed by the appellate authority and directed the official respondents therein to reinstate the petitioner therein into service, but, however, held that the petitioner therein was not entitled for wages and notional increments from the date of removal till the date of reinstatement. Assailing the said order, the present Writ Appeal has been filed by the State.

4. The learned Standing Counsel for Central Government submits that the punishment as imposed by the appellate authority is quite legal and valid and it is within his competence. He further submits that before imposing the enhanced punishment, a show cause notice was issued to the 1st respondent and a representation was also submitted by the employee and after considering the

same, enhanced punishment was imposed and therefore it is in compliance of the provisions contained in Rule 46(3) of Central Industrial Security Force Rules, 2001. Therefore he submits that the order of the learned single Judge is liable to be set aside.

5. On the other hand the learned counsel for the 1st respondent-employee submits that the appellate authority has not considered the matter in a proper perspective and the order passed by the learned single Judge is quite legal and valid and it needs no interference.

6. At the threshold we find that the employee-1st respondent has not availed the statutory remedy of appeal as provided under the Rules. Against the order of enhanced punishment made by the appellate authority, a further appeal lies to the authority superior to the appellate authority. Admittedly in the instant case, 1st respondent has not availed the said appeal remedy. On this ground, without going into the merits of the case, we are inclined to set aside the order of the learned single Judge and direct the 1st respondent to approach the appellate authority.

7. Accordingly the Writ Appeal is allowed with a direction that the 1st respondent shall file an appeal before the appropriate appellate authority within a period of two (02) months from the date of receipt of a copy of this order. On such appeal being filed, the appellate authority shall consider the same and pass appropriate orders within a period of two months thereafter. It is open for the 1st respondent to urge all the points which are available to him under law including the issues touching upon the validity of the enquiry conducted by the disciplinary authority. No costs.

(G.BIKSHAPATHY, J.)

23rd November, 2004.

(P.S.NARAYANA, J.)

SSR

To

1 Secretary, Union of India,

Ministry of Home Affairs,
Union of India Central Secretariat,
New Delhi

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Patna, Bihar State .

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